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INTERIM STUDY BY THE
SUBCOMMITTEE ON
CONSTITUTION, ELECTIONS AND FEDERAL RELATIONS

ELECTION REFORM

December 1973

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INTRODUCTION

In accordance with the direction of House Joint Resolution No. 14, the Joint Interim Subcommittee on Constitution, Elections, and Federal Relations undertook a study of election laws pertaining to cities and towns. Consideration was given to the fact that problems raised by earlier studies were yet to be solved, to problems and questions raised by officials in cities and towns responsible for conducting elections, and to the obvious confusion of the election code. It readily became clear that the problems associated with laws governing local elections are too complex to be resolved expediently and that only extensive concentrated work on code revision can solve these problems.

The subcommittee therefor recommends that further study of codes governing local elections be conducted. It further recommends that this further study concentrate on developing the feasibility of implementing one or more of the suggested solutions to the problem which have been considered by the subcommittee and which are discussed in this report. It also recommends that extensive coordination and cooperation be effected between responsible legislative and administrative officials.

The subcommittee recommends a broad mandate be given for a two-year study.

This report discusses problems amenable to immediate solution as well as approaches to more comprehensive solutions for other problems.

GENERAL

To determine the specific problems which plague municipal election officials, the city clerk of each county seat was asked for an evaluation of the major election problems experienced since the election law revision in 1969. Although the response was not overwhelming (ten out of fifty-six clerks responded), there were sufficient comments to point out widespread problems which fall into three categories.

First, there are procedural requirements which are unclear or unnecessary especially as applied in smaller cities and towns. Relatively simple amendatory bills could solve many of these problems.

Second are problems created by lack of understanding of the election code. Part of this problem results from the fact that lay people administer city elections as only a portion of their

total responsibility. As a result, they do not become completely familiar with the provisions of the law. The other part of the problem is that the code really is ambiguous in many areas relating to city elections.

A third area in which revision in statutes and procedures would be the best solution is described by the complaints received from various city clerks. These clerks complain of too many elections with too few candidates, poor timing requirements on the election calendar, conflicting dates with school district elections, the need for better training for election workers, and election laws that are confusing because they are spread out in several titles in the codes.

Problems in the last two categories could be solved by some sweeping changes in the election law: changes designed to cut down on the bulk of the law, consolidate the law, provide uniformity in election procedure, and provide administrative channels for solving election problems before they occur. These changes could also result in greater voter turnout and lower overall election costs for local governments. The following measures are among ways to achieve these ends:

- (1) Consolidate all election codes into one title and organize them topically.
- (2) Consolidate all regular local elections including municipal, county, school district, and other district elections.
- (3) Establish a statewide election administration (probably in the office of the Secretary of State) with legal authority to promulgate administrative regulations for conducting elections and to provide authoritative guidance and answers for local problems.
- (4) Pare to a minimum the administrative detail contained in the election codes and allow these details to be determined administratively.

The remainder of this report will discuss each of these four proposals in detail. Only detailed further study can determine how much or how little of each suggestion could be implemented in Montana.

CODE CONSOLIDATION

Consolidate all election codes into one title and organize them topically.

The provisions for qualifications of electors, administration of elections, and responsibilities of officials are set out in Titles 11, 16, 23, and 75. The Corrupt Practices Act has been recodified into Title 23 from Title 94 without substantial change. The fact that election officials must search through so many pages makes their job much more difficult. Conflicts have also occurred because, with so many sections cross referenced, amendments to the law often overlook conflicts they create.

It should also be noted that the officials administering local elections often do not have ready access to the codes because they have been lost or misplaced. This may be largely due to the fact that when the codes are consulted it is found that complicated cross referenced sections are of little help to them. What is needed is an election code containing clear-cut procedures written in unambiguous language. Achieving this goal as a part of code consolidation would be helpful.

Because the manner of conducting all elections is substantially the same, the law could be drawn so that each topic of election law could be taken up in one place and the responsible party in each type of election could be identified. This would require much careful drafting but the result would be a more compact and clear election code. Another way would be to devote a chapter to each type of election providing as much uniformity as possible. In any case, city clerks have agreed that having city election laws in one section of the codes would be a giant step forward.

CONSOLIDATION OF LOCAL ELECTIONS

Consolidate all regular local elections including municipal, county, school district, and other district elections.

The Montana Legislative Council Report No. 24, dated October 1968, stated that although there was strong disapproval throughout the state of holding municipal elections along with general elections, there was some interest among city officials contacted in combining municipal elections and school elections. A number of municipal election officials have made similar recommendations this year.

Consolidation of elections would enable a similar calendar of events to be followed each year simplifying election administration extremely. Existing local conflicts could also be corrected.

At present, Section 11-709 sets the date for city elections on the first Tuesday of April of every second year and Section 75-1603 sets an annual election of school trustees on the first Saturday in April. The administrative load of holding two separate elections so close together is heavier than need be while the fixed cost of operating each election is high even though not many candidates or issues are involved. This situation also irritates voters who must remember to fit many elections into their schedules. Voter turnout is notoriously low for local elections and among the contributing causes for this must be the number of relatively low profile elections held in local communities.

This reasoning leads one to suggest even further election consolidation for the following reasons:

- (1) To prevent duplicate voting and other frauds, it has been accepted that all regular elections of the same type should be held at the same time statewide. If municipal and school elections were held together, all school district elections should be held on the same date as the consolidated election.
- (2) In a letter written to the Legislative Council in July 1969, the late Willard E. Fraser, then Mayor of Billings, pointed out that "city governments deal directly with 'people problems' and these include bond issues for airports, sewers, streets, slums, pollution, garbage, dogs, ditches, health, parks, police, fire, recreation, and water." He went on to say that city and school elections "are both essentially elections dealing with local and community problems." Along this line of reasoning one can recognize that all local elections held within a county are of this nature and

to consolidate them would not inject irrelevant state and national issues into local elections nor would the attention of the voter be distracted from concentration on local issues. In fact, it would appear that interest in local issues would be heightened if all local issues and candidates were under scrutiny at one time. Furthermore, a more aroused, interested, and informed electorate should turn out in greater numbers than is now the case. It should not be hard to improve on the 20% voter turnout now common in municipal elections.

- (3) The 1973 Montana Constitution provides other incentives for consolidating local elections. The first of these is the fact that single member legislative districts will be apportioned as nearly equally as possible according to the decennial federal census. It will not be possible for these legislative districts to be contained within single counties in many cases; thus, voting for a legislator will become an issue not so much related to county politics and issues as to statewide issues. It would be well to separate these elections for this reason. The second is the fact that the new constitution permits local government units to adopt self-government charters. It is highly likely that some charters might provide for county-wide government. If local elections were already consolidated there would need be no special administrative problem in a local self-government charter county. Uniformity of election procedure could thus be maintained.

If elections were consolidated in this manner, the maximum benefit would be derived from holding them in the off year on the same day as is used for the general election. For example, these elections would be held the first Tuesday after the first Monday in November in odd numbered years. A primary election could be held, where required, one month in advance of this election.

STATEWIDE ADMINISTRATION

Establish a statewide election administration (probably in the Office of the Secretary of State) with legal authority to promulgate administrative regulations for conducting elections and to provide authoritative guidance and answers for local problems.

Personnel in the Office of the Secretary of State and in the League of Cities and Towns have indicated that there is a significant problem in election administration which can be traced to the fragmentation of authority and responsibility for election administration. City and county clerks who encounter problems in the rush of pre-election and election day activities, need quick authoritative guidance in most cases. Usually they cannot get it because there is no central authority at city, county, or state level which is responsible to make decisions or follow-up on orders. When there is a question of legal interpretation, statewide uniformity is not possible because each area can follow its own ideas. Guidance at state level can only be unofficial and guidance suggestions need not be followed by local officials. The National Municipal League points out that the need for uniformity in procedures with allowable flexibility to cope with local situations is the main reason for establishing a central election administration system. Accomplishment of this goal in Montana would alleviate many of the difficulties encountered in municipal elections.

The Montana Administrative Procedure Act would provide guidance to administrative officers in establishing guidelines and properly controlling the election process. In this way, election administration would be flexible enough to meet changing needs and authoritative enough to assure uniformity in procedures.

SIMPLIFICATION OF THE ELECTION CODES

Parse to a minimum the administrative detail contained in the election codes and allow these details to be determined administratively.

In the winter 1963 issue of "State Government," Joseph P. Harris suggested that the right to vote, method of nomination, the form of the ballot, registration of voters, penalties for election frauds, and campaign finance provisions were valid topics for statutory regulation. He went on to suggest that the size of precincts, location of polling places, number and salary of precinct officers, hours of voting, and the precise form of most records used could well be left to local or central administration authorities.

The National Municipal League has pointed out that a degree of centralized responsibility with the maximum feasible degree of administrative discretion would make it possible to clear the clutter of inflexible detail from election laws, detail which most local officials often ignore, usually because they are either ambiguous, contradictory, or just too complicated to be comprehensible.

This suggestion would help simplify elections even without statewide administration, but would work best if implemented in conjunction with the establishment of a statewide election administration. Simultaneous implementation of this section and code consolidation would also be beneficial.

CONCLUSION

Report No. 24 of the Montana Legislative Council, October 1968, in its analysis of municipal elections recommended that "more detailed study of all types of elections and alternatives should be made prior to changing those election procedures." It was as a result of the 1968 study that the 1969 revision of election laws was effected. Yet there was no follow-up detailed study of laws relating to local elections. The subcommittee found that there was neither enough time nor were there enough meetings available to it to pursue a sufficient study of all local election problems and their solution. The subcommittee, however, recognizes the gravity of these problems and recommends that this question be given immediate further attention. Such further study should include consideration of the points made in this report. Responsible election officials at all levels should be involved in the study as it develops. Sufficient time and meetings should be planned to assure thorough consideration of code revisions proposed.

